

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

VS.

HEIDI HAISCHER

Defendant,

2:11-cr-267-MMD-CWH

MINUTES OF THE COURT

Dated: March 11, 2016

PRESENT:

THE HONORABLE **MIRANDA M. DU, U.S. DISTRICT JUDGE**

DEPUTY CLERK: PEGGIE VANNOZZI COURT REPORTER: KATHY FRENCH

PRESENT FOR PLAINTIFFS: THOMAS HALL AND CAITLIN COTTINGHAM, TRIAL ATTORNEYS

PRESENT FOR DEFENDANT: LISA RASMUSSEN AND MICHAEL KENNEDY

IN COURT PROCEEDINGS – JURY TRIAL – DAY 4

Proceedings begin at 8:06 AM. Special Agent Dawn Tomazich is present. The Government's paralegal Andrew Schilling is present. Defendant is present, on bond. The jury is not present.

Ms. Rasmussen advises the Court that a stipulation has been reached to admit Defendant's exhibit 504. Defendant's exhibit 504 is admitted pursuant to stipulation of counsel.

Mr. Hall provides the Court with a red line version of the pattern jury instruction for wire fraud. Mr. Kennedy and Mr. Hall present argument.

The Court advises counsel that it has received a note from Juror 10 that indicates that he may know Kelly Nunes and that asks if the Court could provide a picture of Mr. Nunes. A picture is located and displayed. Juror 10 is brought into the courtroom. Juror 10 confirms that he knows Mr. Nunes and answers questions from the Court and Mr. Hall. The Court grants the Government's motion to excuse the juror for cause. Juror 10 is returned to the Courtroom and the Court thanks and excuses him.

Recess: 8:30 AM – 8:32 AM.

Mr. Hall advises the Court that the Government has not had time to review the 21 PowerPoint slides that Defense counsel intend to use with expert witness Shera Bradley. The Court reviews the slides and orders the deletion of certain slides.

Recess: 9:05 AM to 9:15 AM. Defendant is present. The jury is not present.

The Court makes findings for the record with regard to Defendant's Motion to Admit Prior Sworn Testimony of Unavailable Witness in Defendant's Case in Chief (dkt. No. [236]) and Defendant's Renewed Motion to Admit Prior Sworn Testimony of Unavailable Witness in Defendant's Case in Chief (dkt. No. [246].) For the reasons given in open court, Defendant's Motion to Admit Prior Sworn Testimony of Unavailable Witness in defendant's Case in Chief (dkt. No. [236]) is denied as moot. Defendant's Renewed Motion (dkt. No. [246]) is granted in part and denied in part. The Court will allow the portions of the testimony relating to the witness's observation of Kelly Nunes altering bank records. The Court will allow the portions of the testimony listed on page two of the motion with the exception of the portion of page 23 of the transcript. The Court will not reconsider its prior ruling denying portions of the transcript that relates to other transactions.

It is determined that one juror is not present in the jury room.

Recess: 9:25 AM to 11:12 AM. The Defendant is present. The jury is present.

Michael D. Nunes is sworn to testify. Ms. Rasmussen examines the witness. Defendant's exhibit 534 is marked and admitted. Defendant's exhibit 527 and 533 are marked. Ms. Cottingham examines the witness. Government's exhibit 110 is marked. Ms. Rasmussen examines the witness. The witness is excused.

Christopher Malandrino is sworn to testify. Mr. Kennedy and Ms. Cottingham examine the witness. The witness is excused.

The jury exits at 12:30 PM. The Court has ordered sandwiches for the jury so that they remain in the jury room during the lunch recess.

Outside the presence of the jury, the Court and counsel discuss the disputed jury instruction.

Recess: 12:35 PM – 1:08 PM. The Defendant and the jury are present.

Shera Bradley is sworn to testify. Ms. Rasmussen examines the witness. The witness is qualified as an expert in psychology. Mr. Hall and Ms. Rasmussen examine the witness. The witness is excused.

Portions of the trial transcript of **Carson Winget** are read by Ms. Rasmussen and Mr. Kennedy.

The Court admonishes the jury. IT IS ORDERED: the trial is continued to Monday, March 14, 2016 at 8:00 AM in Las Vegas Courtroom 4A. The jury exits at 2:30 PM.

The Court directs Ms. Rasmussen to provide a copy of the portions of the transcript that was read. The Court will mark the exhibit as Defendant's exhibit 570 to this hearing and it will not be given to the Jury.

Mr. Kennedy and Mr. Hall present argument with regard to the Defendant's proposed use of statements Kelly Nunes provided to Special Agent Tomazich in 2016. The Court asks counsel to provide authority for their positions.

The Court addresses the wire fraud jury instruction. Defendant's presence during this portion of the hearing is waived. The Court adopts the red line changes of the pattern jury instruction on wire fraud submitted by the Government this morning, over the objections of Defendant. Other jury instructions are settled. The Court will offer at least part of the indictment in a jury instruction and encourages the parties to try to reach a resolution and propose an instruction on this issue.

Recess: 3:15 PM.

LANCE S. WILSON, CLERK
U.S. DISTRICT COURT

/S/ Peggie Vannozzi
Deputy Clerk